

-PS-O-

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

ANTHONY AMAKER, et al.,

Plaintiffs,

-v-

09-CV-0396A(Sr)

COMM. GLENN GOORD, et al.,

Defendants.

DECISION AND ORDER

This matter has been referred to the undersigned, pursuant to 28 U.S.C. § 636(b)(1)(A)-(C), for all pretrial matters and to hear and report upon dispositive motions for consideration of the district judge. (Docket No. 23.)

The Court previously directed the Clerk of the Court to cause the United States Marshals Service to serve the Summons and Amended Complaint upon the defendants, see 28 U.S.C. § 1915(d) and Fed.R.Civ.P. 4(c)(3) (Docket No. 32), and summons were issued for the defendants named in the Amended Complaint. The Court thereafter requested the New York State Attorney General's Buffalo Regional Office, pursuant to *Valentin v. Dinkins*, 121 F.3d 72, 75 (2d Cir. 1997), to ascertain addresses at which the following defendants could be served: Dr. Lester Wright, Deputy Superintendent James, C.O. Schuck, C.J. Martinez and Kolowski. (Docket No. 33.) Plaintiff Anthony Amaker had advised the Court that he did not know and could not locate an address for

these defendants for purposes of completing the summonses and U.S. Marshal Forms for service upon them.

The New York State Attorney General's Office responded to said Order and advised the court that: Wright and Martinez are retired and could be served by forwarding the Summons, Amended Complaint and Marshal Forms to William Gonzalez at DOCCS' Counsel's Office, who would then forward the papers to those defendants directly; James and Schuck are currently employed at the Attica Correctional Facility and could be served there; and DOCCS has no record of an employee by the name of "Koloski" and that a defendant by that name, unless the name is misspelled, is not named as a defendant in the caption of the Amended Complaint nor in the body of Amended Complaint itself (Docket No. 29). Upon review of both the caption of the Amended Complaint and the body of the Amended Complaint the Court cannot not locate a defendant by the name of "Koloski" or "Kolowski" as it is spelled in the caption set forth in the Docket Report in this matter and the Docket Entry noting the docketing of the Amended Complaint (Docket No. 29). It thus appears that Koloski or Kolowski is not a defendant and the Clerk of the Court will be directed to remove that name from the caption of this action as set forth in the Docket Report.

IT IS HEREBY ORDERED that the Clerk of the Court is directed to remove from the caption in the Docket Report for this action defendant "Kolowski" and to terminate said defendant as a party to this action;

FURTHER, that the Clerk of the Court is directed to re-issue summonses for defendants Lester Wright, C.J. Martinez, Deputy Superintendent R. James and C.O. Schuck and to cause the United States Marshals Service to serve defendants Wright and Martinez by forwarding the Summons and Amended Complaint and this Order and the Order filed March 23, 2012 (Docket No. 32) to William Gonzalez, Deputy Counsel, Counsel's Office, New York State Department of Corrections and Community Supervision, 1220 Washington Avenue, Albany New York 12226, and to serve defendants James and Schuck by forwarding the Summons, Amended Complaint and this Order and the Order filed March 23, 2012 (Docket No. 32) in their names to the Attica Correctional Facility; and

FURTHER, the Clerk of the Court is directed to complete the necessary summonses and Marshal Forms for service on these four defendants.

SO ORDERED.

DATED: **Buffalo, New York**
August 10, 2012

s/ H. Kenneth Schroeder, Jr.
H. KENNETH SCHROEDER, JR.
United States Magistrate Judge